**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE M.N.KRISHNAN**

**WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929**

**CRP.No. 1564 of 2001(I)**
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**AGAINST THE ORDER DATED 13/02/2001 IN EP 76/1997 IN OS.285/1983 of PRL.MUNSIFF COURT,NEDUMANGAD**
**.....**

**REVN. PETITIONER/DECREE HOLDER:**
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1. **VASUDEVANSASEENDRAN, GOVERNMENT SERVANT, ARUVIYODE VILAYIL VEEDU, PANTHAPLAVU, KARAKULAM VILLAGE, NEDUMANGAD TALUK.**

2. **GOVINDAN SUKUMARAN, GOVERNMENT SERVANT OF .DO. .DO.**

**BY ADV. SRI.L.MOHANAN**

**RESPONDENTS/JUDGMENT DEBTOR:**
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1. **PATHUMMAL BEEVI NABEESA BEEVI, GOVT.SERVANT, RESIDING AT KAFUR MANZIL, KANIYAPURAM, CHIRAYINKEEZHU TALUK FROM CHARUVILAKAM VEEDU, ARUVIYODE PANTHAPLAVU MURI, KARAKULAM VILLAGE.**

2. **YOUSAF, AGED 45 YEARS, CHARUVILAKAM VEEDU, ARUVIYODE, PANTHAPLAVU MURI, KARAKULAM VILLAGE.**

**R1 BY ADV. SRI.R.S.KALKURA**

**THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 05/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

M.N.KRISHNAN,J

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C.R.P.No.1564 of 2001

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Dated this the 5th day of September, 2007

ORDER

This revision petition is preferred against the order of the Principle Munsiff, Nedumangad in E.P.No.76/1997. The E.P is filed with the allegation that the defendant in the suit are attempting to excavate earth contrary to the directions contained in the judgment and decree of the Appellate Court and therefore it is necessary for the court to appoint an expert for the purpose of implementing the decision of the Appellate Court. It is specifically averred in the execution petition that on 19.10.1997 the defendants had come to their property to remove the earth contrary to the directions and on account of the timely intervention it did not materialise. The learned counsel for the revision petitioner had brought to my notice the decision of the District Judge, Thiruvananthapuram, in A.S.No.305/1986. It is very clearly laid down there in that the injunction is granted against the defendants from excavating earth adjoining the plaint C schedule pathway beyond the present level is noticed in

the Commissioner's Report and Plan. The defendants are also prohibited from excavating earth from their property without leaving atleast 10 links width at the surface level of the plaint A schedule property along with its western boundary and in case earth is excavated it should be done in a slanting manner so as to avoid subsidence of plaint A schedule property. Now the grievance of the revision petitioner is that contrary to the directions attempt is made by the defendants to excavate earth if it materialises it will destroy their property and will be in gross violation of the terms of the judgment and decree. Unfortunately the court below has not approach the matter in that perceptive and has stated that in a decree for injunction this cannot be considered. What the plaintiff apprehends is that if in contravention of the terms of the decree and judgment earth is removed without a slope it will destroy the property and precisely that is what is protected by the Appellate judgment and decree. I feel the said contention requires consideration by the court below and therefore the order under challenge is set aside and the matter is remitted back to the trial court for fresh consideration of the matter especially after referring to the

averments in the execution petition. The court below shall give an opportunity to both sides to adduce evidence in support of their respective contention and dispose of the matter in accordance with law. The parties are directed to appear before the court below on 06.10.2007.

M.N.KRISHNAN,JUDGE

dvs